

**REVENUE DEPARTMENT[701]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

As part of the Department’s review of its treatment of income taxes in light of the United States Supreme Court’s decision in *Comptroller of Treasury of Maryland v. Wynne*, 135 S. Ct. 1787 (2015), the Department discovered an inconsistency in the administrative rules regarding the calculation of the alternative minimum tax (AMT) credit. The maximum Iowa AMT credit that can be claimed each year is the difference between the regular tax liability and the tentative AMT for the current tax year. However, due to a holdover from past practices, the example for the calculation of the AMT credit suggests that regular tax liability less credits must be used in determining the maximum AMT credit that can be claimed. The forms used for individual income, corporate income, fiduciary income, and franchise taxes all rely on the language in the example. As a result, taxpayers with other nonrefundable tax credits may have been directed to reduce their AMT credit lower than necessary. The proposed amendments correct these examples by removing references to using the regular tax “less credits” to calculate the allowable alternative minimum tax credit for a year, bringing the rules up to date with the current law.

Interested persons may make written comments on the proposed amendments on or before October 18, 2016. Written comments on the proposed amendments should be directed by mail to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306-0457; or by e-mail to [ben.clough@iowa.gov](mailto:ben.clough@iowa.gov). Persons who wish to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, by telephone at (515)725-2176 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 18, 2016.

The Department estimates that this change will reduce revenue to the general fund over the next several years by allowing certain taxpayers to reduce their liability by claiming a greater amount of alternative minimum tax credit.

Any person who believes that the application of the discretionary provisions of these rules would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 422.11B, 422.33, and 422.60.

The following amendments are proposed.

ITEM 1. Amend rule 701—42.10(422) as follows:

**701—42.10(422) Alternative minimum tax credit for minimum tax paid in a prior tax year.** Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer’s regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than

the minimum tax for the tax year. If the minimum tax credit is not used against the regular tax for a tax year, the remaining credit is carried over to the following tax year to be applied against the regular income tax liability for that period. The minimum tax credit is computed on Form IA 8801.

**42.10(1)** *Examples of computation of the minimum tax credit and carryover of the credit.*

EXAMPLE 1. The taxpayers reported \$5,000 of minimum tax for 2007. For 2008, the taxpayers reported regular tax ~~less credits~~ of \$8,000, and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayers had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a \$3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. The taxpayers reported \$2,500 of minimum tax for 2007. For 2008, the taxpayers reported regular tax ~~less credits~~ of \$8,000, and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax ~~less credits~~ exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

**42.10(2)** *Minimum tax credit for nonresidents and part-year residents.* Nonresident and part-year resident taxpayers who paid Iowa minimum tax in tax years beginning on or after January 1, 1987, are eligible for the minimum tax credit to the extent that the minimum tax they paid was attributable to tax preferences and adjustments. Therefore, if a nonresident or part-year resident taxpayer had Iowa source tax preferences or adjustments, then all the minimum tax that was paid would qualify for the minimum tax credit.

The minimum tax credit for a tax year as computed above applies to the regular income tax liability ~~less credits including~~ the nonresident part-year credit to the extent this regular tax amount exceeds the minimum tax for the tax year. To the extent the credit is not used, the credit can be carried over to the next tax year.

This rule is intended to implement Iowa Code section 422.11B.

ITEM 2. Amend subrule 52.5(4) as follows:

**52.5(4)** Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid by a taxpayer in prior tax years commencing with tax years beginning on or after January 1, 1987, can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. Computation of minimum tax credit on Schedule IA 8827. The minimum tax credit is computed on Schedule IA 8827 from information on Schedule IA 4626 for prior tax years, from Form IA 1120 and Schedule IA 4626 for the current year and from Schedule IA 8827 for prior tax years.

b. Examples of computation of the minimum tax credit and carryover of the credit.

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2007. For 2008, taxpayer reported regular tax ~~less credits~~ of \$8,000 and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2008 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2007 was used, there is a ~~\$2,000~~ \$3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2007. For 2008, taxpayer reported regular tax ~~less credits~~ of \$8,000 and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2008 because, although the regular tax ~~less credits~~ exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

c. Computation of the minimum tax credit attributable to a member leaving an affiliated group filing a consolidated Iowa corporation income tax return. The amount of minimum tax credit available

for carryforward attributable to a member of a consolidated Iowa income tax return shall be computed as follows: The consolidated minimum tax credit available for carryforward from each tax year is multiplied by a fraction, the numerator of which is the separate member's tax preferences and adjustments for the tax year and the denominator of which is the total tax preferences and adjustments of all members of the consolidated Iowa income tax return for the tax year.

d. Computation of the amount of minimum tax credit which may be used by a new member of a consolidated Iowa corporation income tax return. The amount of minimum tax credit carryforward which may be used by a new member of a consolidated Iowa income tax return is limited to the separate member's contribution to the amount by which the regular income tax ~~less credits~~ set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

The separate member's contribution to the amount by which the regular income tax ~~less nonrefundable credits~~ exceeds the tentative minimum tax shall be computed as follows:

$$\frac{\left[ \frac{A}{B} \times C + D \right] \times F}{E} = \begin{array}{l} \text{Separate member's contribution to the amount by which regular income tax} \\ \text{less credits set forth in section 422.33 exceeds the tentative minimum tax.} \end{array}$$

A = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.

B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.

C = Iowa consolidated income subject to apportionment.

D = Separate corporation income allocable to Iowa.

E = Iowa consolidated income subject to tax.

F = The amount by which the regular income tax ~~less credits~~ set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

e. Minimum tax credit after merger. When two or more corporations merge or consolidate into one corporation, the minimum tax credit of the merged or consolidated corporations is available for use by the survivor of the merger or consolidation.

ITEM 3. Amend subrule 58.5(4) as follows:

**58.5(4)** Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. *Computation of minimum tax credit on Schedule IA 8827F.* The minimum tax credit is computed on Schedule IA 8827F from information on Schedule IA 4626F for prior tax years, Form IA 1120F and Schedule IA 4626F for the current year and from Schedule IA 8827F for prior tax years.

b. *Examples of computation of the minimum tax credit and carryover of the credit.*

EXAMPLE 1. Taxpayer reported \$5,000 of minimum tax for 2011. For 2012, taxpayer reported regular tax ~~less credits~~ of \$8,000, and the minimum tax liability is \$6,000. The minimum tax credit is \$2,000 for 2012 because, although the taxpayer had an \$8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only \$2,000 of the carryover credit from 2011 was used, there is a ~~\$2,000~~ \$3,000 minimum tax carryover credit to 2013.

EXAMPLE 2. Taxpayer reported \$2,500 of minimum tax for 2011. For 2012, taxpayer reported regular tax ~~less credits~~ of \$8,000, and the minimum tax liability is \$5,000. The minimum tax credit is \$2,500 for 2012 because, although the regular tax ~~less credits~~ exceeded the minimum tax by \$3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2013.

*c. Minimum tax credit after merger:* When two or more financial institutions merge or consolidate into one financial organization, the minimum tax credit of the merged or consolidated operation is available for use by the survivor of the merger or consolidation.